

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERRY W. EMMERT,

Plaintiff,

No. 3:13-cv-01317-ST

v.

CLACKAMAS COUNTY,

ORDER

Defendant.

HERNANDEZ, District Judge:

Magistrate Judge Stewart issued a Findings & Recommendation (#60) on December 29, 2015, in which she recommends the Court grant in part and deny in part Defendant's motion to dismiss and grant Plaintiff's motion for leave to file a Third Amended Complaint. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed, I am relieved of my obligation to review the record *de novo*. United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); see also United States v. Bernhardt,

840 F.2d 1441, 1444 (9th Cir. 1988) (*de novo* review required only for portions of Magistrate Judge's report to which objections have been made). Having reviewed the legal principles *de novo*, I find no error. .

CONCLUSION

The Court ADOPTS Magistrate Judge Stewart's Findings & Recommendation [60], and therefore,

Defendant's motion to dismiss [50] is granted in part and denied in part as follows: (1) the motion is granted as to (a) the 142nd Avenue West Properties, Clackamas River Estates, Clear Creek Estates, and Emmert Heights in the Second Claim; (b) Emmert Heights, the Con Battin Property, and the Sunnyside Road Property in the Fourth Claim; and (c) the Third and Fourth Claims for failing to affirmatively plead the discovery of the tortious conduct; and (2) the motion is otherwise denied;

Further, Plaintiff's Motion for Leave to File a Third Amended Complaint [51] is granted, but Plaintiff is directed to cure the deficiencies described in the Findings & Recommendation before filing that pleading. The Third Amended Complaint shall be filed no later than fourteen (14) days of the date of this Order.

IT IS SO ORDERED.

DATED this 4 day of February 2016.



MARCO A. HERNANDEZ
United States District Judge